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Attorneys for Plaintiff
Walker & Zanger, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WALKER & ZANGER, INC., a New York
corporation

Plaintiff,

vs.

PARAGON INDUSTRIES, INC., d/b/a
BEDROSIANS, a California corporation

Defendant.

No. C-04-01946-VRW

**STIPULATION AND ~~PROPOSED~~
ORDER CONTINUING HEARING DATE
FOR DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT AND MOTION
TO STRIKE SURVEYS OF PLAINTIFF'S
EXPERT HENRY OSTBERG, PH.D.**

Pursuant to this Court's October 24, 2005 Case Scheduling Order, the last day to file and serve dispositive motions was scheduled for January 26, 2006, and the last day for hearings on dispositive motions was scheduled for March 2, 2006. On January 26, 2006, Defendant Paragon Industries, Inc. ("Paragon") filed its Motion for Summary Judgment. Due to technical difficulties, the Motion itself was not filed until shortly before midnight and its supporting papers, including an evidentiary objection in the way of a Motion to Strike, were filed between midnight and 5:12 a.m. on January 28, 2006 January 27, 2006. Additionally, Paragon refiled its Motion papers on Saturday, **March 28, 2006** pursuant to ECF instructions because it inadvertently docketed a March 3, 2006 hearing date (instead of March 2, 2006 as set by the Court in its October 24, 2005 Case Scheduling Order), and because it mistakenly filed wrong .pdf files and omitted three exhibits.

Plaintiff Walker & Zanger, Inc. ("Walker Zanger") has objected to Paragon's Motion for Summary Judgment and Motion to Strike as untimely – contending that it was not provided the requisite thirty-five days notice for a March 2, 2006 hearing and that it did not receive certain exhibits until two days after the original filing deadline. Paragon disputes Walker & Zanger's objections because it believes Walker & Zanger suffered no prejudice for three reasons: (1) the refiled papers contain no substantive changes, (2) all papers other than the omitted exhibits were filed before the start of business on January 27, 2006, and (3) Walker & Zanger reasonably should have known that the March 3, 2006 date was in error as it had been on notice of the March 2, 2006 hearing date since October 24, 2005.

In an effort to resolve their differences without unnecessarily taking the Court's time and resources, the parties have met and conferred and agreed to stipulate to continuing the hearing date for the Motion for Summary Judgment and Motion to Strike one week, until March 9, 2006. The parties note that this continuance will not impact the Court's existing schedule for pretrial and trial dates. Accordingly, the parties stipulate to the following deadlines and respectfully request that they be approved by this Court:

1 Last Day for Hearing on Paragon's Motion for Summary Judgment and Motion to
2 Strike: March 9, 2006.

3
4 Last Day for Walker Zanger to file and serve Oppositions to Paragon's Motion for
5 Summary Judgment and Motion to Strike: February 16, 2006.

6
7 Last Day for Paragon to file and serve Reply briefs, if any, in support of its Motion
8 for Summary Judgment and Motion to Strike: February 23, 2006.

9
10 DATED: January 31, 2006.

11 REED SMITH LLP

12
13 By /s/ _____
14 William R. Overend
15 Attorneys for Plaintiff
Walker & Zanger, Inc.

16 DATED: January 31, 2006.

17 I BRAUN DEGENSHEIN

18
19 By /s/ _____
20 I Braun Degenshein
21 Attorneys for Defendant
Paragon Industries, Inc.

22 **ORDER**

23 PURSUANT TO STIPULATION, IT IS SO ORDERED

24
25 DATED: February 6, 2006.

26
27 VAUGHN R. WALKER
28 Chief United States District Judge

